LIBRARY
SUPREME COURT, U. S.

No. 386

Office-Supreme Court, U.S.
FILED
OCT. 7 1964
JOHN F. DAVIS, CLERK

Supreme Court of the United States

October Term, 1964

THE ACRO MANUFACTURING COMPANY,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF FOR PETITIONER

H. Bruce Graves
John W. Riely
Wallace H. Hoadley
Electric Building
Richmond, Virginia 23212

Joseph A. Howell, Jr.
Earl L. Hargrove, Jr.
1701 Byrd Avenue
Richmond, Virginia 23226

Counsel for Petitioner

Hunton, Williams, Gay,
Powell & Gibson
Of Counsel

Dated: October 7, 1964

REPLY BRIEF FOR PETITIONER

The Solicitor General's brief argument merits an equally brief reply.

1. The Solicitor General states that § 332 of the Code

> ". . . does not, however, presuppose that the noncapital nature of distributed assets carries over to the parent." (Brief, p. 5).

He cites no authority for this conclusion, for, indeed, there is none—except the decision in this case of the court below. His conclusion presupposes the question for decision here.

2. The issue here is whether the non-capital nature of the assets did carry over. We know that many characteristics are carried over specifically (§§ 332(a), 334(b)(1), 381 and 1223(2)) and that the compendium (§ 381) was not intended to be all inclusive (Petition, p. 6). The issue here is not foreclosed by the words of the Code.

3. No economic justification exists for different tax treatment of property sold by a subsidiary that is then dissolved and property received on dissolution of a subsidiary and immediately sold. The economic position of the parent —the real owner of the business—is the same in either event, and the tax treatment should be the same. By this argument, we do not seek to pierce the corporate veil or disregard the corporate existence of the subsidiary; we seek only recognition of the economic reality that is embodied in § 332 of the Code.

4. The taxpayer is charged with "manipulation" (Brief, p. 5). The taxpayer seeks consistent treatment of the character of the assets: the Commissioner seeks to change their character. Manipulation implies misconduct or evasion: the taxpayer can be accused of neither. The Commissioner con-

sidered the point under § 269 and made no effort to invoke that section.

5. The possibilities for manipulation under the decision below are extensive. Appreciated inventories can be sold by the parent after liquidation at a capital gain. Depreciated inventories can be sold by the subsidiary before liquidation at an ordinary loss. This rule provides a tax haven for the sophisticated and, unfortunately, a tax trap for the unwary. If taxation is a highly practical matter, the realities should govern. The creation of tax shelters by judicial action is to be avoided; that result obtains as a consequence of the decision below.

This Court should consider this case and set at rest an important question in business transactions and tax administration.

Respectfully submitted,

H. BRICE GRAVES
JOHN W. RIELY
WALLER H. HORSLEY
Electric Building
Richmond, Virginia 23212

JOSEPH A. HOWELL, JR.
EARL L. HARGROVE, JR.
1701 Byrd Avenue
Richmond, Virginia 23226

Counsel for Petitioner

HUNTON, WILLIAMS, GAY,
POWELL & GIBSON
Of Counsel

Dated: October 7, 1964